IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 470 OF 2006

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : B.P. DHARMADHIKARI, J.
FEBRUARY 08, 2007.

Heard Shri Thakkar, learned counsel for the petitioner and Shri Gaikwad, learned AGP for respondent.

The appellate Court has set aside ex parte decree observing that there was no valid service upon the respondent. Shri Thakkar, learned counsel has invited attention to evidence of bailiff on record and also his reports at Exhs. 6 & 9.

Shri Gaikwad, learned counsel relies upon the report at Exh. 6 and also evidence of respondent – original defendant. The report at Exh. 6 is under Order 5, Rule 17 of Civil Procedure Code and in it the bailiff has expressly mentioned that present respondent has refused to accept the summons and no witness was ready and willing to attest such refusal. Thereafter the Court below has under

Order 5, Rule 20 of C.P.C. again issued summons through bailiff and he has has mentioned that respondent has refused to accept the summon and nobody was ready and willing to attest such refusal. The bailiff has deposed accordingly on oath. The respondent has entered the witness box and she has denied that any summons were tendered to her by the bailiff. Even perusal of report under Order 5, Rule 20 of C.P.C. prepared on 13.2.2001 reveals that bailiff has found said respondent at her house and he offered summons but she refused to accept the same. It is, therefore, clear that there is oath against oath and on both the occasions the bailiff has mentioned that there was no witness ready and willing to attest the same. In these circumstances, the appellate Court has preferred to accept the evidence of present respondent. I, therefore, do not find that any case is made out for interference.

Shri Thakkar has made a grievance that suit for possession filed by the petitioner is of the year 2001. In these circumstances, the respondent to file her written statement in said Regular Civil Suit No. 8 of 2001 within a

period of six weeks from today after collecting the copy of plaint, if same has not been received by her. The Court thereafter shall proceed to decide the said Civil Suit finally as early as possible and in any case within a period of five months thereafter.

Writ Petition is accordingly disposed. There shall be no order as to costs.

JUDGE

*GS.